

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BYTEMARK, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 1:17-cv-01803-PGG
	§	Hon. Paul G. Gardephe
XEROX CORP., ACS TRANSPORT	§	
SOLUTIONS, INC., XEROX	§	
TRANSPORT SOLUTIONS, INC.,	§	
CONDUENT INC., and	§	
NEW JERSEY TRANSIT CORP.,	§	
	§	
Defendants.	§	

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS COUNTS ONE,
TWO, EIGHT, NINE, AND TEN OF PLAINTIFF'S FIRST AMENDED COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 15, 2017, or at such time at which this matter may be heard in Courtroom 705 of the Thurgood Marshall United States Courthouse for the United States District Court for the Southern District of New York, located at 40 Foley Square, New York, NY 10007, the Honorable Paul G. Gardephe presiding, pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Xerox Corp. ("Xerox"), ACS Transport Solutions, Inc. ("ACS"), Xerox Transport Solutions, Inc. ("Xerox Transport"), Conduent Inc. ("Conduent"), and New Jersey Transit Corp. ("NJ Transit") will, and hereby do, move this Court for an order dismissing, with respect to all Defendants, Counts One and Two for patent infringement, Count Eight for unfair competition under New York law, and Count Nine for unjust enrichment under New York law, and, with respect to Defendants Conduent and NJ

Transit, Count Ten for unjust enrichment under New Jersey law, because the First Amended Complaint (Dkt. No. 40) of Plaintiff Bytemark, Inc. (“Bytemark”) fails to state a claim upon which relief can be granted, for the reasons set forth in the accompanying memorandum of law. This motion is based on this Notice of Motion and Motion, the Memorandum of Law and Exhibits A-H filed in support thereof, and such other materials as may be presented to the Court before, at, or in connection with, the hearing.

WHEREFORE, Defendants respectfully request that the Motion be granted.

Dated: November 10, 2017

Respectfully submitted,

/s/Douglas P. LaLone

Douglas P. LaLone, Esq.
Michael T. Fluhler, Esq.
Thomas E. Donohue, Esq.
Christopher W. Wen, Esq.
Fishman Stewart PLLC
39533 Woodward Ave., Suite 140
Bloomfield Hills, MI 48304
Tel.: (248) 594-0600
Fax: (248) 594-0610
dlalone@fishstewip.com
mfluhler@fishstewip.com
tdonohue@fishstewip.com
cwen@fishstewip.com

/s/David Dehoney

David Dehoney
McKool Smith
One Bryant Park
47th Flr
New York, NY 10036
Tel: (212) 402-9424
Fax: (212) 402-9444
ddehoney@mckoolsmith.com

/s/David Sochia

David Sochia
McKool Smith
300 Crescent Court
Suite 1500
Dallas, Texas 75201
Tel: (214) 978-4245
Fax: (214) 978-9444
dsochia@mckoolsmith.com

CERTIFICATE OF SERVICE

The undersigned certifies that on November 10, 2017, Defendant's Motion to Dismiss Counts One, Two, Eight, Nine and Ten of Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b), Notice of Motion, Exhibits A-H and Proposed Order were served via e-mail on the following counsel of record:

Darius Keyhani
Counsel for Plaintiff Bytemark
Meredith & Keyhani, P.L.L.C.
125 Park Avenue, 25th Floor
New York, NY 10017
(211) 380-1325
Dkeyhani@meredithKeyhani.com

/s/Sara N. Jodoin